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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

Chapter 11

Sears Holdings Corporation, *et al.*,¹

Case No. 18-23538-RDD

Debtors.

(Jointly Administered)

**PINNACLE EXPRESS, INC.'S OBJECTION TO DEBTORS'
SECOND MOTION FOR ORDERS ESTABLISHING
STREAMLINED PROCEDURES GOVERNING ADVERSARY
PROCEEDINGS BROUGHT BY DEBTORS**

Pinnacle Express, Inc., a creditor of debtor Florida Builder Appliances, Inc., objects to the Streamlined Procedures recommended in the debtor's Motion for Orders Establishing Streamlined Procedures, etc. [DE 7204], stating:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

PRELIMINARY STATEMENT

1. Pinnacle Express, Inc. (“Pinnacle”) is a corporation based in Highlands County, Florida. It sold goods to debtor Florida Builder Appliances, Inc. (“FBA”), and it has filed a proof of claim for the balance that FBA left unpaid. FBA filed its adversary complaint, Adv. Proc. No. 20-08460-rdd against Pinnacle on January 30, 2020. FBA is seeking the establishment of procedures that “stack the deck” against the defendants, when it already has a natural advantage—even in frivolous suits—by virtue of the economies of scale inherent in filing thousands of similar suits. The court should not include mandatory attendance at a mediation in New York as a requirement in these cases.

FACTUAL BACKGROUND

2. The debtor’s suit against Pinnacle is for alleged preferential transfers totaling \$319,434.68. While the complaint has not yet been served on Pinnacle, the debtor’s motion asks the court to mandate; (a) that the parties participate in mediation before dispositive motion practice, and before discovery requests; (b) that the mediations take place in New York City, using mediators selected solely by the debtor; (c) that the defendants attend the mediation by physical presence, unless the mediator in his sole discretion relieves them from this requirement. The debtors’ counsel has not responded to Pinnacle’s counsel’s written and telephoned request that he and his client representative be relieved from attending the mediation in person.

3. Since Pinnacle is located in Florida, and Florida Builder Appliances’ principal place of business is located in Pompano Beach, Florida—though its executive office has supposedly moved to Illinois, neither it nor the debtor’s sales manager with whom Pinnacle dealt during the preference period is anywhere near New York. Other defendants are no doubt in the same position, of having to spend a great deal of money to travel with their lawyer to New York City for mediation of a matter where the plaintiff is in fact based in Florida.

4. Defending cases like this are always a great hardship for vendors around the country, even when there is an obvious defense (like Florida Builder Appliances, Inc.'s solvency during the preference period, or the ordinariness of the transfers). No defendant should ever be put in the position of being forced to settle a non-meritorious case solely because additional costs, such as interstate travel, have been imposed by the court. Pinnacle submits that, at least in cases where the amount in controversy is less than one million dollars, it would be fair to both sides to relieve defendants from physical attendance at the mediation, so long as the defendant's representative has a strong telephone connection to the mediation room, or to require that Florida defendants being sued by Florida Builder Appliances, Inc. be offered a mediation date near Pompano Beach, Florida (such as Fort Lauderdale, Boca Raton, West Palm Beach, or Miami).

WHEREFORE, Pinnacle Express, Inc., requests that this court modify the debtors' suggested procedures in the manner requested in paragraph 4 above.

I hereby certify that this objection has been served today by the court's electronic service system on the debtors' counsel and all persons registered to receive electronic service.

Dated: March 13, 2020

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